

Kerala High Court

Centre Of Earth Science Studies, ...

VS

Dr. Mrs.Anson Sebastian, ...

on 17 February, 2010

**IN THE HIGH COURT OF KERALA AT
ERNAKULAM**

WA.No. 2781 of 2009()

1. CENTRE OF EARTH SCIENCE STUDIES, PB NO.

... Petitioner

Vs

1. DR. MRS.ANSON SEBASTIAN, SCIENTIST, EI

... Respondent

**2. STATE INFORMATION COMMISSION PUNNEN
ROAD**

For Petitioner :SRI.P.RAMAKRISHNAN

For Respondent :SRI.SHAJI P.CHALY

The Hon'ble the Acting Chief Justice MR.P.R.RAMAN

The Hon'ble MR. Justice C.N.RAMACHANDRAN NAIR

Dated :17/02/2010

O R D E R

C.R.

P.R.RAMAN, AG. C.J. &

C.N.RAMACHANDRAN NAIR, J.

**Writ Appeal Nos.2781, 2798 & 2799 of Dated this
the 17th day of February, 2010.**

JUDGMENT

Ramachandran Nair, J.

The appellant is a State Government agency engaged in studies on earth science. The first respondent, a Scientist working with the appellant applied to the Information Officer of the appellant for getting information pertaining to certain documents relating to domestic enquiry against another employee and also for getting entries in the Confidential Reports of six other employees of the appellant. However, the Information Officer rejected the first respondent's application. Consequent upon which the first respondent filed appeals against the orders of the Information Officer before the State Information Commission, which allowed the appeals directing the appellant to give all the details and copies of documents asked for by the first respondent. The appellant filed various Writ Petitions challenging the orders of the State Information Commission, which were rejected by the learned Single Judge. Even though five Writ Petitions were filed by the appellant before the learned Single Judge, all were dismissed by a common judgment. Though appeals were filed against all the Writ Petitions, two of the Writ Appeals were withdrawn by the appellant. The above are the remaining three cases of which two are against the orders of the learned Single Judge upholding State Information Commission's direction to give copies of Confidential Reports in respect of six Scientists of the appellant and in the third appeal challenge is against direction to give copies of certain documents in domestic enquiry proceedings conducted by the appellant in respect of one of its employees. We have heard counsel appearing for the appellant, Standing Counsel appearing for the State Information Commission and counsel appearing for the first respondent in all the appeals.

2. While counsel for the appellant has claimed immunity based on Section 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005 and relied on judgment of this court in PUBLIC INFORMATION OFFICER AND ANOTHER VS. STATE INFORMATION COMMISSION AND ANOTHER in W.P.(C) No.9445/2009 dated 28.10.2009, counsel appearing for respondents relied on decision of the Calcutta High Court in UNIVERSITY OF CALCUTTA VS. PRITAM ROOJ reported in AIR 2009 (CAL) 97 and a Division Bench judgment of this court in V.S.LEE VS. STATE OF KERALA AND OTHERS in W.A. No.1990/2007 in support of their contentions. It is a settled position particularly by virtue of the Division Bench judgment of this court that the provisions of the Right to Information Act should be given a liberal construction and, therefore, what is to be considered is whether the immunity or exemption claimed by the appellant under Section 8(1)(e) and 8(1)(j) of the Act is tenable. For easy reference, the said Section is extracted hereunder:

"S.8(1)(e) - Information available to a person, in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

8(1)(j) - Information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

3. We are of the view that Section 8(1)(e) has no application because it deals with information available with the person in his fiduciary relationship with another. Information under this head is nothing but information in trust which but for the relationship would not have been conveyed or known to the person concerned. This applies to the

relationship that exists between a patient and a Doctor, a lawyer and a client etc. We do not find any application of this provision in relation to the information sought by an employee about other co-employees of the same employer. Therefore, the claim of immunity by the appellant under Section 8(1)(e), in our view, was rightly rejected by the learned Single Judge and we, therefore, uphold the finding of the learned Single Judge.

4. The next question to be considered is whether the information sought by the first respondent relates to personal information of other employees, the disclosure of which is prohibited under Section 8(1)(j) of the Act. Here again, we notice that under exceptional circumstances even personal information disclosure of which is prohibited under the main clause, can be disclosed if the Central Public Information Officer or the State Public Information Officer or the appellate authority as the case may be, is satisfied that the larger public interest justifies disclosure of such information. What is immune from disclosure as personal information is not one relating to any public activity or interest and what is prohibited is furnishing of information which causes unwarranted invasion of the privacy of the individual. In this case we notice that the information sought by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organisation. Domestic enquiry is an open trial which is essentially initiated as part of disciplinary proceedings against the employee. Domestic enquiry involves production of evidence including documents, some of which are even public documents. We do not know how documents produced in a domestic enquiry can be treated as documents relating to personal information of a person, the disclosure of which will cause unwarranted invasion of his privacy. Similar is the position with regard to the particulars of Confidential Reports maintained in respect of co-employees of the first respondent all of whom are Scientists. Confidential Reports are essentially performance appraisal by higher officials which along with other things constitute the basis for promotions and other service benefits. Counsel for the State Information Commission has produced a Government of India Office Memorandum dated 14.5.2009 by which the Confidential Reports have been taken away and in their place what is authorised to be maintained is annual appraisal reports. According to Standing Counsel for the Information Commission, the Confidential Reports are no longer personal documents or private documents and all the employees are entitled to know the details of the same. Counsel appearing for the first respondent submitted that first respondent has grievance in her service and in order to satisfy herself about the propriety and

correctness of promotions and other benefits given to similar employees, she wants details of the same. We do not think the Confidential Reports of the employees maintained by the appellant can be treated as records pertaining to personal information of an employee, the publication of which is prohibited under Section 8(1)(j) of the Act. We, therefore, concur with the findings of the learned Single Judge on this issue as well. Consequently Writ Appeals are dismissed.

P.R.RAMAN

Acting Chief Justice

C.N.RAMACHANDRAN NAIR

Judge

pms